



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1094 OF 2022

Bhadrashree Steel & Power Ltd. .. Petitioner
through Its Authorised Representative

Versus

The State of Maharashtra through .. Respondents
The Revenue and Forest Dept. and
Ors

WITH
INTERIM APPLICATION NO. 12911 OF 2023
IN
WRIT PETITION NO. 1094 OF 2022

Manohar Rajaram Hagare .. Applicant

Versus

Bhadrashree Steel & Power Ltd. .. Respondent
through Its Authorised Representative

WITH
INTERIM APPLICATION NO. 75 OF 2023
IN
WRIT PETITION NO. 1094 OF 2022

Bhadrashree Steel & Power Ltd. .. Applicant
through Its Authorised Representative

Versus

The State of Maharashtra through .. Respondents
The Revenue and Forest Dept. and
Ors

...

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Mr. Rahul Gaikwad a/w Ms. Nikita Abhyankar, Ms. Reshma Nair, Ms. Komal Singh & Ms. Prena Shah i/b Gravitass Legal for the Petitioner.

Dr. Milind Sathe, AG a/w Mr. N.C. Walimbe, Addl, GP, Mr. Ketan Joshi, 'B' Panel & Smt. P.J. Gavhane, AGP for the State – Respondent.

Ms. Fleur D'souza i/b Asahi Legal for the State – Respondent No.4.

Mr. Utkarsh R. Pondkule i/b Ms. Vrushali Maindad for the Intervener.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

**RESERVED ON : 23rd JULY, 2026
PRONOUNCED ON: 9th OCTOBER, 2026**

JUDGMENT (Per BHARATI DANGRE J):-

1. The Petitioner company incorporated under the Companies Act has approached this Court in the backdrop of the fact that it was declared as a successful bidder in the e-auction conducted on 20/04/2021 by the liquidator of Harneshwar Agro Products Power and Yeast (I) Limited, "the corporate debtor", which had defaulted in its payment against the loan given by Punjab National Bank (PNB). It is PNB, who had filed a company petition by invoking Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) before the National Company Law Tribunal (NCLT), which was admitted by order dated 26/06/2019.

By order dated 03/12/2020, NCLT directed that the assets of the corporate debtor be liquidated, and Mr. Jigar Shah, the

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Respondent No. 4, was appointed as a liquidator under Section 34(1) of the Code for conducting the liquidation proceedings, as envisaged under Chapter III of the Code, by following the liquidation process set out in the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

On the liquidation proceedings being initiated, there was an embargo imposed on institution of any suit or other legal proceedings against the corporate debtor, save and except on seeking liberty of the liquidator.

In accordance with the said appointment, the liquidator initiated the process to liquidate the assets of the corporate debtor and published an e-auction sale notice for sale of its assets, and the e-auction notice being issued on “as is where is basis”, “as is what is basis”, “whatever there is basis” covered the factory (land and building) covering various Gut numbers set out therein at Mukti Nagar, village Kalas, of Pune-Solapur Road, along with the plant and machinery.

The notice also indicated the reserved price of the factory and the plant and machinery.

2. Responding to the public notice, the petitioner placed its bid for purchase of the land and plant and machinery, and it was declared as a successful bidder. It paid the entire bid amount to the tune of Rs. 13,00,78,000/-, being bifurcated as below—

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Sr. No.	Particulars	Final Price (excl. stamp duties and other Cost)
1.	Land and Building	Rs. 8,03,60,000/-
2.	Plant and Machinery	Rs. 4,97,18,000/-
	Total	Rs. 13,00,78,000/-

3. Upon the full and final payment of the bid amount being made, the liquidator issued a sale certificate in favour of the petitioner on 28/07/2021, wherein it was agreed that a Conveyance Deed be executed for conveying the right, title and interest in the said property in its favour, from the corporate debtor. Accordingly, a draft of the Deed of Assignment cum Conveyance Deed, was prepared and it was presented before the Joint District Registrar and Collector of Stamps, Pune i.e. Respondent No. 2.

The Joint District Registrar was also informed that the land was purchased in the course of liquidation of the assets of the corporate debtor, Harneshwar Agro Products Power and Yeast (I) Limited, as per the IBC and pursuant to the valuation conducted as per the procedure enumerated under the IBC, the liquidator auctioned the said land for a reserve price of Rs. 8,03,60,000/-, and the land was sold at the same value, namely Rs. 8,03,60,000/-. However, on 01/10/2021, the Joint Registrar and Collector of Stamps determined the stamp duty payable upon the Deed of Assignment cum Conveyance Deed, in favour of Bhadrashree Steel and Power Ltd. The order recorded that the said property was sold for Rs. 8,03,60,000/-, and a Sale Certificate was issued by the liquidator in favour of the

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petitioner. However, the said authority computed the market value of the said property and computed it to be Rs.41,96,21,500/-, and levied a stamp duty under the Maharashtra Stamp Act, 1958, by invoking clause 25(b)(iii), at the rate of 4%, that is Rs. 1,67,84,860/-.

The said authority refused to consider the objection raised by the petitioner that the property was sold by an auction which should be accepted as the market value of the property and it had fetched a price of Rs. 8,03,60,000/-, and the stamp duty is payable on the amount so determined.

The authority also relied upon the comments offered by the Assistant Town Planner, who, with reference to the Circular dated 08/09/2015, opined that it is necessary to ascertain the market value of the property and the only exception would be the one provided under Rule 4(6) of the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995, i.e. when the property is sold or allotted by a Government or a semi-Government body or a Government undertaking or a local authority on the basis of a predetermined price, or the property being purchased or acquired or taken over by the Government, semi-Government body or Government undertaking or local authority, and in such a case the value determined by such bodies shall be the true market value of the subject property.

4. Being aggrieved by the impugned order, the petitioner preferred an appeal before the Deputy Inspector General of Registration and Deputy Controller of Stamps, Pune Division,

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that is Respondent No. 3, who passed an order directing that the payment towards plant and machinery, as set out in the Sale Certificate, shall also be considered for adjudication of stamp duty, though the petitioner had sought to register the Deed of Conveyance and not the Sale Certificate. The matter was therefore remanded for assessment afresh.

On 04/01/2022, Respondent No. 2 passed a revised order, once again computing the stamp duty based upon the valuation of the property being described as its market value, which was determined as Rs. 35,70,60,500/-, and levying the stamp duty at the rate of 4% in terms of clause 25(b)(iii), and thus creating a liability of Rs.1,78,53,100/- towards stamp duty. The order further directed that upon payment of the aforesaid stamp duty, the document would be registered.

5. We have heard learned counsel Mr. Gaikwad, appearing for the petitioner, and the learned Advocate General, Dr. Milind Sathe, representing the State.

‘Rule’ was issued by order dated 04/02/2022.

6. The petitioner is aggrieved by the aforesaid action of the respondents and by placing reliance upon the decision of this Court in case of **Spectrum Constructions and Developers LLP vs State of Maharashtra through Joint Registrar¹**, as well as the decision in the case of **Pinak Bharat and Company vs Anil Ramrao Naik²**, it is urged that in case of a company under

¹ 2022 SCC Online Bom 3693

² 2019 SCC Online Bom 527

liquidation under Section 33 of the IBC, 2016, no independent inquiry is warranted, as the valuation of the property is already conducted in terms of the IBC prior to conduct of sale under liquidation through the liquidator.

Mr. Gaikwad would invite our attention to the scheme contemplated under the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995, formulated in exercise of the powers conferred by sub-section (1) and clause (d) of sub-section (2), read with the proviso to sub-section (3) of Section 69 and sub-section (3) of Section 31, and all other powers enabling in that behalf, it is submitted that the said Rules contemplate preparation of an Annual Statement of Rates (ASR) of immovable property, upon the data being collated in respect of average rates of lands and buildings in every Tahsil, Municipal Corporation or Local body area, and arranged in the Annual Statement of Rates ward-wise/zone-wise, in respect of the urban properties and, in respect of rural properties, taluka-wise and village-wise, as the case may be.

It is submitted that such rates shall be determined for every year, to be known as the “Annual Statement of Rates” (ASR), along with ‘Valuation Guidelines’, by taking into account the average rates of lands and buildings prepared.

By virtue of sub-rule (6) of Rule 4, whenever any instrument is produced for registration before any Registering officer, it is imperative for him to verify the market value of the lands and buildings determined in accordance with the ASR

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and valuation guidelines issued from time to time. If the market value as stated in the instrument is lesser than the market value determined by the above procedure, then the officer shall refer the same to the Collector of the District for determination of the true market value of the property, although, by the three provisos appended, an exception is carved out for the Registering Officer when an instrument is presented to him.

According to Mr. Gaikwad, the issue in this regard has been put to rest by the decision of the Hon'ble Apex Court in the case of **Registrar of Assurances and Another vs ASL Vyapar Private Limited and Another**³, When the Apex Court was dealing with Section 47A inserted by the Indian Stamp (West Bengal Amendment) Act, 1990, and with reference to the definition of market value as defined into Section 2(16B), the reference came to be answered in the wake of divergent views expressed and while upholding the provision of Section 47A of the Act, the Court specifically took note of the process followed in the course of auctions, where the price obtainable may be slightly less, as a bidder has to take care of the scenario where the auction may be challenged, which could result in passage of time in obtaining perfection of title, with also the possibility of it being overturned.

Mr. Gaikwad would submit that in the said decision, a way is paved out for court-monitored auctions, where it is held that the registering authority would not have a say, as to what is the market price, and doing so would amount to the

³ 2022 SCC Online SC 1554

registering authority sitting in appeal over the decision of the Court permitting sale at a particular price. It is therefore held by the three-Judge Bench of the Apex Court that no further inquiry in that aspect is required.

Thus, according to Mr. Gaikwad, as far as the auction or the process followed by the liquidator under the supervision of the NCLT , involving an e-auction is definitely covered within the framework determined by the Apex Court, and when the auction notice prescribed the Reserved price and the petitioner purchased the property for the said price, which was indicative of its market value, according to Mr. Gaikwad, it was not open for the Respondent Nos. 2 and 3 to determine the market value and then demand deficient stamp duty.

The counsel for the petitioner, Mr. Gaikwad, would also place reliance upon the decision of the Division Bench of this Court in case of **Dr. Prince John Edavazhikal vs Collector of Stamps and Joint District Registrar & Ors⁴**, when the question arose about the levy of stamp duty payable on the immovable property purchased by the petitioner in an auction conducted by the Bank of India under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the question arose as to whether the market value of the property ought to be the value mentioned in the sale certificate issued by the Bank of India, and therefore, whether the stamp authorities were prohibited from going beyond the said value and coming to the conclusion

⁴ 2024 SCC Online Bom 3872

that the market value is more than what is mentioned in the sale certificate.

It was contended by the petitioners that the sale was conducted by the Bank of India, which is a Government of India undertaking, and under the provisions of the SARFAESI Act, 2002, and therefore, there is no question of any other consideration flowing in the transaction other than what is mentioned in the sale certificate, and therefore the Collector of Stamps had no power to come to any other conclusion with reference to the market value of the property.

On consideration of this submission, in the backdrop of the decision of the Apex Court in **ASL Vyapar** (supra), it is submitted that the Division Bench arrived at a conclusion that there was a fair price discovery in relation to the said property and though it may be true that in a SARFAESI auction, the price obtainable may be slightly less, as the bidder may be required to take care of a scenario where the auction may be challenged, which could result in delay in obtaining perfection of title, coupled with the possibility of being overturned but then that is the price obtainable as a result of the process by which the property has to be disposed of. Holding that an auction of the property through the provisions of the SARFAESI Act, 2002, was one of the transparent methods by which the property can be sold, as it contemplate strict rules on price discovery and ensure that the secured creditor follows those rules ruthlessly. Therefore, it is held that no doubt can be expressed about the

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declared price in the sale certificate issued under the provisions of the SARFAESI Act, to conclude that it is not the correct market value.

Reliance is also placed by the petitioner on a decision of the Division Bench of this Court in **Anil Kisanchand Bhatia vs Joint District Registrar, Class I and District Collector of Stamps & Ors⁵**, where the auction was conducted by Union Bank of India and the properties were purchased by the petitioner on the basis of open bids, it was held that there was no reason for the Collector to issue a demand notice on the basis of the 'market value' and the properties by doubting the sale price of the properties recorded in the subject sale certificates, and the petitions came to be allowed.

7. Dr. Milind Sathe, the learned Advocate General, would invite our attention to the definition of the term "instrument" as defined in Section 2(l), and he would also invoke the definition of the term "Market Value" in the Maharashtra Stamp Act, 1958 indicative of the price which such property would have fetched if sold in the open market on the date of execution of such instrument, or the consideration set out in the instrument, whichever is higher. According to Dr. Sathe, Section 3 of the Maharashtra Act, which is the charging section, has to be read with Section 31, which is the authority of the Collector to adjudicate an instrument, brought before him and determine the duty which is chargeable on the said instrument as per the

⁵ Bombay High Court, order dt.10/02/2026 in WP/14539/25 & WP/14907/25.

Articles of Schedule I. According to him, the said provision is equivalent to Section 27 of the Indian Stamp Act.

Inviting our attention to Schedule I, which has set out the stamp duty payable on various types of instruments, our attention is invited to Entry 16, in specific & Entry 25.

8. Dr. Sathe would submit that the stamp duty chargeable on such an instrument is the same which is leviable on a conveyance under clause (a), (b) or (c) of Article 25 on the market value of the property.

According to him, Article 25 covers a “conveyance”, and the stamp duty is leviable upon determining the true market value of the property which is the subject matter of conveyance and in case of movable property, the stamp duty leviable is 3% of the market value, and in the case of immovable property, depending upon its location, the stamp duty is levied. Thus, it is the contention of the learned Advocate General that stamp duty is leviable by determining the market value of the property.

He would also invite our attention to the Rules of 1995, and in particular Rule 4, prescribing the procedure for determining the Annual Statement of Rates of the immovable property and according to him, upon an instrument being presented for registration, the Registering Officer shall verify the market value of the land and building in accordance with the ASR and if an instrument depicts the market value less than the one indicated in the ASR, then the instrument shall be presented to the Collector for determination of its true market value.

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9. According to Dr. Sathe, the stamp duty shall be levied on the basis of the market value of land and building determined in accordance with the ASR and valuation guidelines issued from time to time and the only exceptions are the three provisos appended to sub-rule (6) of Rule 4;

(a) If a property is sold or allotted by the Government or Semi Government body or a Government Undertaking or a Local Authority on the basis of a predetermined price, then the value determined by the said bodies, shall be the true market value of the subject matter property. To cite an example, he would submit that the predetermined price fixed by bodies like MHADA, CIDCO, etc., would be considered.

(b) Where the property is purchased or acquired or taken over by the Government, Semi-Government body, or Government Undertaking or Local Authority, then the actual value determined as consideration by the said bodies mentioned in the deed, shall be considered to be the true market value of the property.

(c) Where the market value has been stated in accordance with or more than that prescribed in the statement issued by the Chief Controlling Revenue Authority, but the Registering Officer has reason to believe that the true valuation of the immovable property cannot be arrived at without having recourse to local inquiry or extraneous evidence, and he may therefore refer it to the Collector of the District for determination of the true market value of the property and proper duty payable thereon.

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10. Thus, according to Dr. Sathe, it is only in the above exceptions that are provided to sub-rule (6) that the value determined, shall be considered as market value, or else the market value shall be taken as determined in accordance with the ASR and the Valuation guidelines.

The learned Advocate General distinguished the decision in the case of **ASL Vyapar** (supra) by submitting that it was a court-monitored public auction, where it was held that discretion would not be available to the registering authority under Section 47A of the Indian Stamp Act, (West Bengal Amendment Act), 1990 and therefore, the ratio flowing from the said decision is not applicable to the present case, where the auction is conducted by the liquidator. He would rely upon the decision in the case of **Embassy Property Developments Private Limited vs State of Karnataka and Others**⁶, where it is held that NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature, and therefore it can exercise only such powers within the contours of its jurisdiction as prescribed by law which it is called upon to administer. He would submit that NCLT and NCLAT are constituted not under the IBC, 2016, but under the Companies Act, 2013, which has not defined the contours of the powers and functions under IBC but has merely declared that upon the Tribunal and the Appellate Tribunal being constituted, it shall discharge such powers and functions

⁶ (2020) 13 SCC 308

conferred on it by or under the Companies Act, or any other law for the time being in force.

According to Dr. Sathe, since NCLT is not a Court, and the auctions conducted under its aegis definitely do not enjoy the protection of the provisos appended to sub-rule (6) of Rule 4. The contention that once the NCLT has determined the valuation of the property for its auction, it is not open for the Collector to determine the true market value, is an erroneous submission according to him. The decision cited by the learned counsel for the petitioner in the case of **Trident Estate Private Limited vs The Office of Joint District Registrar-Class-I, and Ors⁷**, is also distinguished by Dr. Sathe by submitting that it relates to an auction conducted by a Sale-cum-Monitoring Committee constituted by the Hon'ble Apex Court, which is quite a different situation than the one which lies before us.

11. The question that is falling for our consideration in the wake of the rival contentions is within a very narrow compass, as we are called upon to answer it in the backdrop of a sale Certificate obtained pursuant to the property being purchased in an auction conducted by the Liquidator appointed by the NCLT upon an application filed by the Resolution Professional seeking liquidation of the corporate debtor, Harneshwar Agro Products Power and Yeast (I) Limited, on the ground that no resolution plan has been received, and a request being made under Section 33(1) of the IBC, 2016, praying to liquidate the

⁷ 2024 SCC Online Bom 3423

corporate debtor in terms of Chapter III of the IBC by appointing a liquidator, shall be accepted as the true market value of the property sold and purchased. It is in pursuance of the process that is followed by the liquidator, when the land and building belonging to the corporate debtor, along with the plant and machinery standing thereon, was proposed to be sold through e-auction, the petitioner emerged as the successful bidder, in whose favour the Liquidator issued a certificate of sale under Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, on 28/07/2021. The question that falls for consideration is whether the price set out in the sale certificate shall be construed as the “market value” of the property, and whether the Collector of Stamps is entitled to determine the true market value on the premise that the price indicated in the sale certificate is less than the market value determined by him.

12. The said question deserves to be answered in the backdrop of certain provisions in law.

The Maharashtra Stamp Act, 1958 being an enactment amending the law relating to stamps and stamp duties in the State of Bombay, extends to the whole State of Maharashtra. It has designated various authorities to discharge the duties under the said statute and by virtue of Section 3, the following instruments are chargeable with duty of the amount indicated in Schedule I as the proper duty therefor respectively, that is to say -

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“(a) every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act ;

(b) every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State :”

Provided that a copy or extract, whether certified to be a true copy or not and whether a fascimile image or otherwise of the original instrument on which stamp duty is chargeable under the provisions of this section, shall be chargeable with full stamp duty indicated in the Schedule I if the proper duty payable on such original instrument is not paid”

However, no duty shall be chargeable in respect of -

“(1)any instrument executed by or on behalf of, or in favour of, the Government in cases, where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument [or where the Government has undertaken to bear the expenses towards the payment of the duty.

(2)any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Bombay Coasting Vessels Act, 1838, or [Merchant Shipping Act, 1958.”

The aforesaid statute is comparable to the Indian Stamp Act, 1899, which is an enactment of the Parliament for consolidating and amending the law relating to stamps, which is applicable to the whole of India.

With Section 3 being the charging section, setting out the liability of instruments to duty of the amount indicated in the Schedule as proper duty. The Maharashtra Act defines “market value” in Section 2(na), which reads as follows:-

“(na) ‘market value’ in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher”

However, it is worth noting that the definition of market value in the Indian Stamp Act, in relation to an instrument, has a different connotation, as Section 2(16B) reads as follows:-

“Section 2(16B) Market Value – “market value”, in relation to an instrument through which-

- (a) any security is traded in a stock exchange, means the price at which it is so traded;
- (b) any security which is transferred through a depository but not traded in the stock exchange, means the price or the consideration mentioned in such instrument;
- (c) any security is dealt otherwise than in the stock exchange or depository, means the price or consideration mentioned in such instrument;”

13. The Maharashtra Act, 1958 is appended with a Schedule, as the Act levy duty of the amount indicated in the Schedule qua each type of instrument and as far as conveyances are concerned, whether they relate to movable property or immovable property, stamp duty is levied by taking into consideration the market value of the property. Since we are concerned with a certificate of sale, we deem it appropriate to reproduce Entry 16, along with the corresponding stamp duty payable, and it reads as follows.

Description of Instrument	Proper Stamp Duty
16. CERTIFICATE OF SALE (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue officer or any other officer empowered by law to sell property by public auction.	The same duty as is leviable on a Conveyance under clause (a), (b) [or (c)] as the case may be, of Article 25 on the market value of the property.

14. It is therefore necessary to ascertain as to how and in what manner the market value is to be determined in the State of Maharashtra for computing the stamp duty payable in respect of conveyances.

The Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995, framed by the State of Maharashtra, has defined “valuation guidelines” to mean the guidelines issued by the Chief Controlling Revenue Authority from time to time for determination of the market value of a property on the basis of the Annual Statement of Rates.

Rule 4 is the provision setting out as to how the Annual Statement of Rates of immovable property shall be prepared and what is relevant for our purpose is sub-rule (6), (7) and (9) of Rule 4.

15. The reading of the aforesaid Rule would reveal that whenever an instrument is produced for registration, the registering officer, that is the Sub-Registrar or the Joint Sub-Registrar appointed u/s.6 of the Registration Act, 1908, shall verify whether the market value of the lands and buildings is determined in accordance with the ASR and valuation guidelines issued by the Chief Controlling Revenue Authority from time to time, as that would be determinative of the duty to be levied. If he finds that the market value stated in the instrument presented to him is less than the market value determined in accordance with the ASR and valuation guidelines, he shall refer the same to the Collector of the

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District for determination of the “true market value” of the property which is the subject matter of the instrument, as the proper duty would be paid by taking into consideration the true market value. However, the exceptions are made to the said Rule by inserting three provisos and if the property is sold or allotted by the Government or semi-Government body or a Government undertaking or local authority on the basis of a predetermined value, then the value determined by the said bodies shall be taken as the true market value. In a second contingency, where the property is purchased or acquired or taken over by the Government, Semi-Government body or Government undertaking or local authority, then the actual value determined as consideration by the said bodies, as mentioned in the deed, shall be considered the true market value of the subject property.

There is also a third contingency provided, but since we are not concerned with the same, we may not refer to the same.

16. A reading of the aforesaid two provisos would thus lead to an inference that if the property is sold or allotted, or if it is purchased or acquired by the Government, Semi-Government body, Government undertaking or local authority, then the actual value determined as consideration by the said bodies, as mentioned in the deed, shall be taken to be its true market value and the Collector shall not be required to determine it in accordance with the ASR and valuation guidelines, but the duty shall be levied by taking the said valuation as the true market

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value.

The issue before us is whether any relaxation above the aforesaid provisos or exception to Rule 4(6) is permissible and the question before us is, when the auction is conducted by the liquidator appointed by the NCLT, and when a particular price is indicated in the sale certificate, whether it can be accepted as the true market value.

17. The State Government and its authorities, in the affidavit filed on 24/02/2023, have disputed that the valuation reports which were relied upon by the liquidator as determinative of the true market value of the property. It is specifically stated in the affidavit that the liquidator called for three valuation reports, and none of the reports actually adopted a procedure to determine the true market value. As far as the report by Mr. Abhishek Joshi, the first valuer, is concerned, it is stated that the land in question was admeasuring 175.5 acres, but the valuer had stated that the property was admeasuring 157.38 acres and out of the subject land, 40 acres was set out for industrial use, and the balance was treated as deemed non-agricultural (NA), as it is owned by a company but the affidavit states that this factor was not considered by the valuer. Reliance upon the sale instances as well as the market inquiry report was also not found to be of any assistance, as the affidavit states that the property is mostly barren land and was not used for agricultural purposes for last ten years, apart from the fact that the land is an undulating surface.

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It is, therefore, stated that the report by Mr. Abhishek Joshi defied all norms of fair valuation to arrive at true and fair market value of the property, and apart from the fact that he had conveniently selected certain sale instances to arrive at the valuation, ignoring other comparable sale instances in the proximity of the property.

The valuation report of Mr. Girish Pawar is brushed aside because it was ignored by the liquidator himself. The third valuation report by Mr. Jadon, which had valued the land at Rs. 7,89,70,000/-, it is stated that there was no basis whatsoever to arrive at such valuation.

18. The State has therefore adopted the following specific stand in defending its action:-

“12. I say that Rule 4(6) and its proviso is neither absurd nor there is any ambiguity and the intention of legislature for embodying the said Rule is only for the purpose of determination of value of immovable properties owned by the Government instrumentalities. I also say that by bare reading of said provision it can be gathered that the legislature never intended to extend the benefit to any other immovable property than the properties which are included in the first proviso.

13. I say that on the aforesaid facts, the adjudicating authority under the Maharashtra Stamp Act has authority to make an enquiry regarding the market value of the property if he prima facie of the opinion that the market value as stated in the instrument is lesser than the minimum value prescribed by the statement. First proviso of said sub-rule 4(6) is an exemption on certain contingencies with clear intention of legislature to whom it will be applied and no other immovable property which is sold either by privately or by way of auction of civil court or revenue court upon the predetermined value, is entitled to claim the benefit under the said first proviso.

14. I say that considering the judgment of Hon'ble Supreme Court as stated hereinabove the orders passed by the Respondents are well within the four corners of law and cannot

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be doubted with. At the cost of repetition, I say that the judgment dated 11.1.2022 in W.P. No. 8005/2021 does not considered judgment of Hon'ble Supreme Court, as referred herein above. Therefore, even the Review Petition has been filed against the said order of this Hon'ble Court by the concerned Respondents therein."

19. The Joint District Registrar and Collector of Stamps further state that he had computed the valuation as per the guidelines prescribed in the Circular dated 15/12/2021, which superseded the Circular dated 08/09/2015. As per the said circular, a plain reading of Rule 4(6) reveals that the Government or its semi-Government institutions, while selling or distributing the land belonging to them based on a predetermined price, shall be considered as the market value. The circular dated 15/12/2021 directed that the valuation shall be computed only on the basis of ASR and therefore, the mechanism prescribed in the earlier circulars issued by the Department was cancelled, and the only methodology for determination of the true market value was restricted to the value as indicated in the Annual Statement of Rates.

20. The Maharashtra Stamp Act, 1958 is the statute prescribing levy of stamp duty on the instruments presented and such instruments as per Section 3 of the Act are chargeable with duty of the amount indicated in Schedule I, which shall be the proper duty to be paid on execution of such document.

The Rules of 1995 formulated by the Revenue and Forest Department of the State of Maharashtra, in exercise of its power under Section 69, by notification in the Official Gazette,

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prescribe as to how the stamp duty shall be assessed and for the said purpose, Rule 4 has contemplated a declaration of Annual Statement of Rates, showing average rates of land and buildings in every Tahsil, Municipal Corporation and local body area, along with the valuation guidelines on 1st day of April of every year, taking into account the average rates of lands and buildings, prepared and submitted to him by the Joint Director of Town Planning and Valuation.

This statement so prepared shall be affixed outside registration office, and every registering officer, whenever an instrument is produced before him for registration, verify, in each case the market value of land and building, and determine the same in accordance with the ASR and valuation guidelines. If he find that the market value stated in the instrument is less than the market value determined by the ASR and valuation guidelines, the same shall be referred to the Collector of the District for determination of the true market value of the property, which is a subject matter of the instrument, and thereupon such instrument shall be chargeable to levy of proper stamp duty.

However, this provision is qualified by three provisos contemplating three different situations.

Firstly, when the property is sold or allotted by government or semi-government body or a government undertaking or a local authority on the basis of predetermined price, then it shall be taken as the true market value of the

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subject property. In a second contingency, when the property is purchased or acquired or taken over by a government, semi-government body, or a government undertaking or local authority, then the actual value determined as consideration by the bodies in the deed shall be considered as the true market value of the subject property. The third contingency stipulated is when the registering officer has reason to believe that the valuation of the immovable property cannot be arrived at without having recourse to the local inquiry or collecting some other evidence, in such a case, he may refer the same to the Collector of the District for determination of true market value of the property, and to determine as to what shall be the proper duty payment thereon.

21. It is not for the first time that the issue of levy of stamp duty on instrument/conveyances not strictly covered by the proviso to Sub-Rule (6) of Rule 4 has fallen for consideration.

In **Bharat Bijlee Limited vs State of Maharashtra and ors**,⁸ a learned Single Judge of this Court was called upon to determine the validity of an impugned order passed by the Superintendent of Stamps, Mumbai, impounding an instrument on the ground that it was not duly stamped. The petitioner Company had purchased the immovable property at the auction purchase price and the office of the Tax Recovery Officer had issued an order of confirmation of auction sale in his favour. It was also certified that the full amount of the purchase money was paid, and the sale was confirmed in favour of the petitioner

⁸ 2002 SCC Bom 1315

company.

Rule 4(6) of the Rules of 1995 was invoked, as the Collector of Stamps had no authority to go beyond the certificate as it could not be sitting in Appeal over the sale certificate issued by the competent authority under the Income Tax Act, certifying the true value of the property.

The issue was answered in the backdrop of the proviso which at the relevant time, read thus :-

"Provided that, whenever a Certificate about market value of a particular property is issued by an Appropriate Authority under provisions of Income Tax Act, or if a property is sold or allotted by Government or Semi-Government body or a Government Undertaking or a Local Authority on the basis of predetermined price, then value stated in such Certificate issued by an Appropriate Authority or determined by the bodies referred to above, shall be true market value of the subject matter property."

Based on the said provision, it was held that the certificate issued by the authorities is to be taken as correct market value and it has to be accepted as its true market value and the petition was made absolute by imposing the costs upon the Superintendent of Stamps to pass the impugned order.

22. This judgment resulted in the issuance of a Circular by the Inspector General (Stamps) on 30/6/2005, with regards to the subject of determination of true market value which read thus:-

Desp. No.: Off.15/MVR/Sell Cert. Valua./372/2005
Office of Inspector General of Registration
and Controller of Stamps, Maharashtra State
New Administrative Building, Ground Floor,
Pune-411001, Date: 30/06/2005

CIRCULAR

While actual implementation of Market Value Rate Charts, generally Government or Local Self-governments or Semi-government Organisations have decided Transfer Value in respect of

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any property or if sale/ purchase transactions of land/property owned by Trust at or different Trusts are done with the. any permission/sanction of Charity Commissioner or Debt Recovery Tribunal, manifestation and publicity of such properties is made and sold prior, highest price in auction. In case of such properties, the Sanction documents. in the Order /Sale Certificate are attached with submitted documents.

However, since long, an implementation instruction is included in the Market Value Rate Chart for not considering about charging stamp fees during valuation of such properties/lands for registration.

In 1995 for finalizing the true market value of land/property in accordance with the rules included in Mumbai Stamp Act that is as per Rule No. 4(6) of True Market Value of Property Rules, 1995, it is cleared that,

Provided that whenever a certificate, about market value of a particular property is issued by an appropriate authority under provisions of Income Tax Act, or if a property is sold or allotted by Government or Semi-Government body or a Government undertaking or a Local Authority on the basis of predetermined price, then value stated in such certificate issued by an Appropriate Authority or determined by the bodies referred to above shall be true market value of the subject matter property.

Considering the provision in above mentioned Rule, it is essential that the value of land indicated in the executed certificate by DRT or any other Competent Officer after Public Auction, should be considered acceptable for registration of document for collection of stamp fees as True Market Value. Similarly, in Writ Petition No.1512/1998 in Mumbai High Court in the matter Bharat Bijali versus Maharashtra Government as per the judgement of Court, order is passed that the Value Fixation in Sale Certificate issued by Competent Officers should be accepted for the registration of that document.

Considering the provision in above mentioned rule and Order of Mumbai High Court the instruction mentioned in Paragraph Two is cancelled by this order and amended orders regarding it are given as follows.

1. Highest price and price in Sale Certificate issued accordingly or the value of property mentioned in the sanction order of any property with its encumbrances and in the condition as it is and the value decided in accordance with other terms and conditions/finalized highest price of a property in the public auction organized by Debt Recovery Tribunal and Government /Semi-Government Organization or its Competent Authorized Officers should be considered as market value for the collection of stamp fees. Here, the valuation/rate in the Market Value Rate Chart should not be used.
2. Registration officers have to charge stamp fees on the price decided as per said sale certificate and this certified sale certificate with extract of property card of property, these both documents

should be attached as part of document as Annexure at the time of registration.

3. In accordance with 18 N (A) of section 2 of Mumbai Stamp Act, 1958, the market value of such transaction will be limited to registration in accordance with sanction order of that particular property. Therefore, it will be essential that while again doing sale-purchase transaction of said land/property, prevailing market value of the property as per the market value rate chart should be considered and valuation should be done.

Therefore, all the related persons should strictly follow these instructions and they should bring to the notice of the related officers in offices under their jurisdiction and uniformity should be maintained in this regard and particularly care should be taken that there will not be any complaint from the public.

Sd/-

(Omprakash Gupta)

Inspector General of Registration & Stamp
Controller, Maharashtra State, Pune.”

23. The aforesaid circular was followed by another circular issued on 13/10/2006 and it set out the procedure for scrutinising the sale certificates issued by the Charity Commissioner in cases where the certificate value is below the market value and contemplated production of documental evidence that auction was done by giving general notice and in case where the sale was not by auction, an inquiry to be made by the Charity Commissioner as to how the valuation was fixed and if no documentary evidence is received, then, the Registrar/Collector of Stamps was entitled to invoke Sections 31, 32A and 33 of the Stamp Act initiating appropriate action and computing the value of the property as per the procedure prescribed in Bombay (Stamp) (Determination of True Market Value of Property) Rules, 1995.

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24. Another Circular came to be issued on 8/9/2015, by which the Government appointed Officers for cooperative and nationalised banks were brought within the fold of the rules. It was prescribed that the auction value would be considered as the market value, and the verification procedure which was prescribed by the circular dated 13/10/2006 was continued.

25. In the series of events, we must take note of the decision of the learned Single Judge in the case of **Pinak Bharat** (supra), when the sale was effected in the regular course through the office of the Sheriff, and the auction sale was preceded by obtaining a valuation, setting a reserve price, inviting bids by public advertisements, assessing those bids, and then deciding in whose favour the sale should be knocked down.

This was followed by a sale certificate issued by the Prothonotary and Senior Master, which was stamped and registered, thereby giving it the shape of a document of title or a document conveying title. When this document was submitted for adjudication under the Maharashtra Stamp Act, 1958, the question arose as to how the 'market value' of the property should be assessed.

26. Referring to Article 16 r/w Article 25 of the Maharashtra Stamp Act, 1958 along with Section 31, authorising the Collector to determine the duty payable on an instrument presented before him, the Court referred to the Rules of 1995, and in particular, Rule 4 and its provisos.

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We deem it appropriate to reproduce the relevant observations from the Law Report:-

“12. The wording of the first proviso is also important in what it leaves out. It makes no mention of a sale through Court although Article 16, as we have seen, specifically deals with public auctions by Civil or Revenue Courts. In other words, we are told that if the Government, in any one of its very many manifestations or avatars, sells a property, and the document mentions that price, then the Collector or the adjudicating authority is required by law, on account of this proviso, to accept that stated value as the true market value without further enquiry. Once these two conditions are met, therefore, the adjudicating authority does not need to make any further enquiry. Indeed, the adjudicating authority cannot make any further enquiry.

13. Why should a sale through a Court by public auction on the basis of a valuation obtained, i.e. by following a completely open and transparent process, be placed at any different or lower level than the government entities covered by the first proviso? Indeed the process that we follow in Courts is perhaps much more rigorous than what the proviso contemplates, because the first proviso itself does not require a public auction at all but only that the Government body should fix “a predetermined price.

14. In our present system, a sale through the Sheriff’s Office, i.e. a sale in execution is always necessarily by public auction. If it is by private treaty, it requires a special order. A sale effected by a Receiver in execution is not, technically, a sale by the Court. It is a sale by the Receiver appointed in execution and the Receiver may, of course, with leave of the Court sell either by public auction or by private treaty. Wherever a sale by public auction, there is an assurance of an open bidding process and very often that bidding process takes place in Court itself (as in the present case).

16. I have no manner of doubt and I have absolutely no hesitation in saying that if the sale either by the Deputy Sheriff with permission of the Court, or by the Court Receiver with leave of the Court, is by private treaty, then it is for the adjudicating authority to certainly determine the true market value.

17. Very different considerations will, however, arise where there is a sale by public auction through a Court, and this sale is preceded by a valuation obtained by the Court as part of that public auction process. In a situation like that, I do not see why such a sale or transaction should stand on any different footing from those that are part of the proviso to sub-rule (6) of Rule 4.1 emphatically do not suggest that the sale certificate amount should be accepted as the true market value. The correct course in such a situation would be for the adjudicating authority to accept the valuation on the basis of which public auction

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was conducted as fair market value; or, if the sale is confirmed at a rate higher than the valuation, then to accept the higher value, i.e. the sale amount accepted. If more than one valuation has been obtained, then the highest of the most recent of the there valuations is to be accepted as the true market value. This approach is consistent with sub-rule (6), its first proviso and ensures that is consistency both between the stamp adjudication process and the basis on which the sale is conducted in the first place. There cannot be an inconsistency between the Court order and a Court-supervised sale on the one hand and the adjudication for stamp on the other. This is the only method by which complete synchronicity can be maintained between the two.”

27. It is in light of the aforesaid observations, the following guidelines as general practice were laid down:-

“23. Hence, as a general practice:

(a) Where there is a sale by private treaty, the usual course stipulated in the Maharashtra Stamp Act will apply;

(b) Where the sale is by the Court, i.e. through the office of the Sheriff, or by the Court Receiver in execution, and is by public auction pursuant to a valuation having been previously obtained, then—

(i) If the sale price is at or below the valuation obtained, then the valuation will serve as the current market value;

(ii) If the final sale price, i.e. the final bid, is higher than the valuation, then the final bid amount and the not the valuation will be taken as the current market value for the purposes of stamp;

(iii) Where there are multiple valuations obtained, then the highest of the valuations most recent, i.e. most proximate in time to the actual sale, should be taken as the current market value.”

In short, the Court ruled that a court-supervised auction sale must be treated at par with sale by government bodies at predetermined prices and any approach that does not maintain that parity is anathema to public administration and without intelligible differentia and once the Court accepts the valuation and confirms the sale, then it is not open to the adjudicating authority to question it, as the Court’s confirmation carries great sanctity.

28. In the case of **M/s. Crystal Construction Company vs. Additional Controller of Stamps & Ors.**⁹, the learned Single Judge, Justice N. J. Jamadar, was confronted with an order passed by the Collector of Stamps adjudicating the stamp duty on unexecuted conveyances and this involved a public charitable trust i.e. A. H. Wadia Trust, which sought to alienate trust property as it was encroached and the Trust was not able to remove the encroachment. Notices were published in newspapers and offers were invited for the sale of the property, and a decision was taken to sell the property to the highest bidder. It obtained a valuation report of the Trust property from a government-approved Architect and valuer and thereafter, an application was preferred under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950. The Charity Commissioner allowed the prospective purchasers to intervene in the proceedings and directed that a fresh auction be conducted to realise the best value for the trust property and the petitioner, Crystal Construction Company, offered the highest bid, which received sanction from the Collector on an “as is where is” and “as is what is” basis.

29. An unexecuted conveyance was presented for adjudication before the Collector of Stamps who determined the market value of the property at Rs. 30,55,88,000, and adjudicated the stamp duty at Rs. 1,52,77,900/-, as against the consideration in the unexecuted conveyance being set out as

⁹ Bombay High Court, order dated 04/03/2024 in WP/2540/2023.

Rs. 2,10,00,000/-. Upon the Appeal being preferred before the appellate authority, it was dismissed holding that the determination of the value of the Trust property by the Charity Commissioner did not fall within the proviso to sub-rule (6) of Rule 4 of the Rules of 1995.

This resulted in the petitioner invoking the writ jurisdiction of this Court.

30. The practical guidelines in **Pinak Bharat** (supra) were noted by the learned Single Judge and they were relied upon, by reflecting as below :-

“21. The aforesaid pronouncements indicates as to how a sale through Court stands even on a higher pedestal than the sale by the authorities envisaged by the first proviso to sub-rule (6), namely; sale or allotment by the Government or Semi-government Body or a Government undertaking or a local authority on the basis of the predetermined price, when the method of auction sale is resorted to, which in itself provides for an open competitive bidding. In the event the process of sale through auction is preceded by obtaining a valuation certificate from an approved valuer and thereafter the open competitive bids are invited then the said process has all the trappings of a process which ensures the objective of fetching of a true market value of the property. The aforesaid pronouncement governs the sale of the trust property by the Charity Commissioner under section 36 of the Trust Act, 1950, provided the elements of prior valuation of the trust property and the sale of the trust property through auction process are adhered to.”

31. The learned Single Judge, therefore, found that the Collector of Stamps had committed a manifest error by not taking into account the fact that the Charity Commissioner had followed the requisite process to ensure the best value and determine the market value of the Trust property on the sole premise that there was a vast difference in the value

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determined by the Deputy Director of Town Planning and the value at which the Charity Commissioner accorded sanction for the sale.

Very pertinently it was observed that the Collector of Stamps as well that the appellate authority had failed to take into account the fact that there were 36 unauthorised occupants over the trust property and hence, the value of the property had considerably diminished as when it is encroached, it will not fetch the expected market price, and particularly when it has been under encroachment for decades.

In light of this aspect, the matter was remanded to the Collector of Stamps to adjudicate the stamp duty in accordance with the observations made by the Court.

32. In the meantime, on 15/12/2021, a Circular was issued by the Inspector General of Registration and Controller of Stamps, thereby cancelling the earlier circulars and directing that the market value in all cases shall be determined in accordance with the Annual Statement of Rates, i.e. the ASR, and clarifying as below :-

“When perusing the rule 4(6), it has a provision regarding presuming the predetermined value as the real market value while selling or allotting the land or built up area owned by the Government/semi government organization. On the basis of these provisions, by conducting the auction process of the asserts of the Private trusts organization through the Charity Commissioner and of the Private asserts, similarly, through Debt Recovery Tribunal (D.R.T.) regarding the determination of the sale value in the order given by him as the market value of the income embodied in the document, dt. Circulars issued on 30/6/2005. After that date pursuant to the circular dated 13/10/2006, some instructions have been issued to examine whether or not the process of auctions in such cases has been carried out in

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transparent manner. Thereafter during the period, in accordance with the difference in the auction price and market value in depth investigation to make a right decision a circular had been passed on 08/09/2015. Under that to acknowledge the difference between the market value and the auction value a competent authority have been authorized. It is expected to take final decision regarding the valuation of the property by considering the defects and actual condition.

A through overview of the provision of the rule 4(6) says that the provision is applicable to the land owned by the government, semi-government, government undertakings as well as the proceeds to be purchased/acquired by the concerned parties. The provision of the said Rule 4(6) shall not apply to the ownership of the private property being sold with the approval of the Charity Commissioner DRT / such similar body owned by private persons / bodies.

Because the market value in all such cases must be determined as per Annual Rate Schedule (ASR). Therefore, the Circulars dated 30/6/2005, 13/10/2006 and 8/9/2015 are being cancelled.”

33. In yet another decision of the Division Bench of this Court in **Spectrum Constructions** (supra), the petitioner purchased the property of a public limited company, which was indebted to various creditors and investors and SEBI was involved in the process of recovery of amounts due from it. Ultimately, the matter reached the Apex Court which constituted a Committee under the chairmanship of Honorable Mr. Justice R. M. Lodha, former Chief Justice of India, to oversee the disposal of lands held by PSA Limited.

The property in question was located in Karjat, District Raigad. The reserve price was fixed by Justice Lodha and the petitioner bid much higher than the reserve price. SEBI issued a sale certificate, and the petitioner was asked to pay the stamp duty on the consideration accepted by SEBI. Subsequent thereto, the petitioner received a demand notice from the

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respondent seeking payment of deficit stamp duty, along with penalty and the petitioner approached this Court by contending that there was no question of State or the Collector of Stamps assessing the market value of the property, since the Supreme Court appointed committee had already determined the market value.

It is in the wake of the rival contentions, with reference to the earlier decision in case of **Pinak Bharat** (supra), it was held thus :-

“7. Chapter III of the Stamp Act deals with adjudication as to stamp. Section 31, the first Section in that Chapter, relates to adjudication as to proper stamps. For our limited purposes, it is sufficient to note that sub-clause (1) requires the Collector to determine the duty with which the instrument presented to him is chargeable. Sub-section (2) speaks of material and evidence that may be required to be given to the Collector to enable him to arrive at his determination. It also says that he may refuse to process any such application unless that material has been given to him. Then sub-section (3) speaks of a situation where the Collector has reason to believe that the market value of the property that is the subject matter of the instrument has not been truly set forth in the instrument, he must determine ‘the true market value of such property’ as laid down in the Bombay [now Maharashtra] Stamp (Determination of True Market Value of the Property) Rules 1995. This would indicate that the Collector is not bound to accept as correct any value or consideration stated in the instrument itself. Should he have reason to believe that it is incorrect, he is to determine the true market value. He is to be guided by the Market Value Rules in doing so.”

34. Yet another decision in case of M/s. Shree Krishna Realtors Vs. The Chief Controlling Revenue Authority & Ors¹⁰, to which one of us, (Justice Bharati Dangre), is a party, involved the sale of the property of the Trust with the sanction accorded by the Charity Commissione. It was held therein that the

¹⁰ High Court of Bombay, order dated 01/08/2022 in WP/2453/2021.

argument that the Charity Commissioner is not covered by the first proviso, cannot be sustained and relying on the decision of case of **M/s. Crystal Construction** (supra), it was held that the sale by Charity Commissioner would be covered within the purview of first proviso to sub-rule (6) of Rule 4. On the aspect whether the Charity Commissioner has predetermined the price for auction by following the proper procedure, it was answered separately, and on the facts of the case, the determination was not found to be depicting the true market value of the property, and hence the petition was dismissed.

The above course of action was followed by another Single Judge (Justice Sandeep Marne), in case of A.H. Wadia Trust, which was earlier pronounced upon Justice N. J. Jamadar, and the matter being remanded to the Collector for its determination, in light of the observations made therein, and the Collector of Stamps passed an order on 16/9/2021. He adjudicated the stamp duty leviable on a deed of conveyance, by fixing the market value of the property at Rs. 41,69,02,000/-, although the price mentioned in the deed of conveyance was Rs.1,972,95,100/-. The learned Single Judge extensively referred to the decision in case of **M/s. Shree Krishna Realtors** (supra), and on examining the facts of the case, by referring to the pronouncements governing the field, also pertinently took note of the observation of the Apex Court in case of **ASL Vyapar** (supra).

35. On facts of the case, it was noted that the said decision did not apply as in the case in hand, the auction was not conducted by the Charity Commissioner, but by the trust itself, and the trust obtained valuation report and filed an application seeking approval under Section 36(1)(a) of the The Maharashtra Public Trusts Act. A re-auction was also conducted and the petitioner participated, but no notice was published for conduct of re-auction and in specific, the Court noted thus:

“32. ... The averments made in the petition do not show that the Charity Commissioner, while conducting the so-called re auction, published notice in the newspapers. Perusal of the Order passed by the Charity Commissioner on 26 April 2016 indicates that the so called re-auction was conducted amongst the bidders who had bid earlier. Thus, the publish any notice in the newspapers Charity Commissioner himself did not for conduct of re-auction. In the re-auction so conducted, the other bidders, including the highest bidder, withdrew their offers and only Petitioner showed willingness to purchase the land at Rs. 2.10 crores. It is thus clear that the Charity Commissioner himself did not issue any public notice. The public notice was issued by the Trust at the time of conduct of first auction. While conducting the re-auction, the Charity Commissioner did not issue any public notice. Therefore, the Collector of Stamps is fully justified in examining the manner in which the Charity Commissioner had fixed the market value of the property.”

36. Our attention was also invited to a comparatively recent decision of the Division Bench in **Trident Estate** (supra) which involved the property which was purchased by the petitioner no.1 under an auction conducted by Sale-cum-Monitoring Committee constituted by the Supreme Court and as against this, the demand notice was served upon the petitioner to pay deficit stamp duty and penalty. The argument canvassed was not something new, as it was urged that the sale was conducted by the Sale-cum-Monitoring Committee constituted by the

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Supreme Court and therefore, the true market value of the property has to be the value at which the property was sold.

Appreciating the said contention in light of the decision in case of **Spectrum Construction** (supra) and **ASL Vyapar** (supra), the petition was allowed by holding that once the bid of the petitioner was accepted by the Committee and the sale was confirmed at a price quoted by the petitioner, which was above the reserve price, there was no question about the Stamp Authorities determining the market value in any other manner, and it should be taken as the market value. As a result, the petition was allowed and the impugned demand notices issued by the Collector were quashed and set aside.

Similarly, in **Dr. Prince John Edavashikal** (supra) a decision delivered on 19/12/2024, where the property was purchased by the petitioner in an auction conducted by Bank of India, under the provisions of SARFAESI Act, and the question arose as to what should be the market value of the property for the purpose of computing the stamp duty payable and whether it should be the value mentioned in the sale certificate issued by BOI and whether the Authorities can go beyond that value and come to a conclusion that the market value was more than what is mentioned in the sale certificate, came to be answered.

In the backdrop of the proviso to Rule 4(6), it was noted that 'Bank of India' is a government undertaking and it is, it which had auctioned the property under the provisions of SARFAESI Act, in which the petitioner emerged as the

successful auction purchaser. It was noted that on this ground alone, the petition should succeed. However, still the Court ventured into an exercise to ensure a fair price discovery and directed Bank of India to file an affidavit. It is pertinent to take note of the following observations :-

“8 It is no doubt true that in a SARFAESI auction, the price obtainable may be slightly less, as any bidder has to take care of a scenario where the auction may be challenged, December 19, 2024 which could result in delay in obtaining perfection of title, also coupled with the possibility of it being overturned. But then that is the price obtainable as a result of the process by which the property has to be disposed of. The entire purpose of empowering the Stamping Authorities to determine the market value of the property, notwithstanding what is stated in the instrument, is to safeguard against undervaluation of the property in the instrument. It is not uncommon in our country, where consideration may pass through two different modes: one, the declared price in the instrument; and the other, the undeclared component. It is to ensure that the State is not deprived of the revenue, that the Stamping Authorities have been granted the power to go beyond what is stated in the instrument, if they come to the conclusion that the value declared in the instrument, is not the correct value. The objective is to take care of such a scenario, so that the State's revenue is not adversely effected, and the price actually obtainable in a free market should be the value on which stamp duty must be paid. An auction of a property through the provisions of the SARFAESI Act, 2002 is one of the most transparent methods by which the property can be sold. In fact, the SARFAESI Act, 2002 puts strict rules into place on price discovery and ensures that the secured creditor follows those rules scrupulously. In such a scenario, without anything more being brought on record, it can hardly be contended that the declared price in the Sale Certificate issued under the provisions of the SARFAESI Act, 2002 is December 19, 2024 not the correct market value because there is also some undeclared component. In the view that we take, we are supported by the decision of the Hon'ble Supreme Court in the case of ASL Vyapar Private Limited (supra). In the facts of that case, though the sale was conducted by a Court, we are of the view that the ratio would equally apply even to an auction conducted under the provisions of the SARFAESI Act, 2002 and that too by a Nationalized Bank such as BOI, and which is a Government Undertaking.”

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In light of the aforesaid, the authoritative pronouncements and the circular issued by the Inspector General of Registration and Controller of Stamps on 15/12/2021, superseding the earlier circulars, we have to answer the issue before us.

37. The petitioner before us is a successful bidder so declared in the e-auction conducted on 20/4/2021 in respect of Land and Building situated at Mukti Nagar, Village Kalas, along with the Plant and Machinery. It is the property of one Harneshwar Agro Products Power and Yeast (I) Limited, a corporate debtor, who defaulted in payment of loan given by the PNB which invoked Section 7 of the IBC and the application was admitted before NCLT. By order dated 3/12/2024, the NCLT directed that the assets of the Corporate debtor be liquidated and the Liquidator was appointed who initiated the process to liquidate the assets by following the provisions of the IBC.

An e-auction sale notice was published and the petitioner emerged as a successful bidder and he deposited the entire amount of Rs.13,00,78,000/- (Rupees Thirteen Crores Seventy Eight thousand). On making the full and final payment, the Liquidator issued a sale certificate in its favour and also agreed that the conveyance deed be executed for convening the right, title and interest in the said property.

Upon the draft of the deed of assignment cum conveyance deed being presented before the Collector of Stamps, the objection was raised about it not being depicting the true

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market value.

38. We have before us the affidavit filed by the Liquidator Mr. Jigar Shah i.e. respondent no.4 and in the said affidavit, he has stated thus :-

“4. I say that upon passing of the Liquidation Order dated December 3, 2020 I have on February 01, 2021 constituted Stake Holder’s Consultation Committee as per Regulation 31(A) of and Bankruptcy Board of India (Liquidation process) Regulations 2016 (Hereinafter referred to as “SCC”).

5. I say that the first meeting of the SCC was held on February 8, 2021 wherein it was decided to conduct fresh valuation of the liquidation estate of the Corporate Debtor as per the Regulation 35 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Hereto annexed and marked as Exhibit C is the copy of the minutes of the meeting of the first meeting of the SCC held on February 8, 2021.

6. I say that I have appointed the following valuers registered with the Insolvency Bankruptcy Board of India to conduct the valuation of the Assets of the said Company in the liquidation process being Land and building situated thereon at Gat No.943, 944, 951, 953/1, 953/3, 953/4, 954, 955, 956/1, 956/2, 957/1, 958 (Part), and 959(Part) admeasuring 175.49 acre at Muktinagar, village Kalas, Off. Pune Solapur Road, Taluka Indapur, District Pune and the plant and machinery lying there.

Sr.No	Name of Valuer along with Regd.No.	Category of Asset
1	Mr. Abhishek Joshi IBBI/RV/02/2018/10129	Land & Building
2	Mr. Girish Pawar IBBI/RV/02/2019/11388	Plant & Machinery
3	Mr. Vishwajeet Singh Jadon IBBI/RV/02/2020/13610 IBBI/RV/02/2019/10700	Land & Building as well as Plant and Machinery
4	Mr. Devang Shah IBBI/RV/07/2019/12422	Plant & Machinery

7. I say that pursuant to the appointment of the abovementioned values the said valuers have submitted their respective reports to me which I have placed before the SCC and have filed the same before the Hon’ble NCLT as per the Liquidation Regulations. The Summary of the valuation Reports submitted by the abovementioned valuers is as follows:

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Sr No	Particulars		Abhishek Joshi	V.S. Jadon	Girish Pawar	Devang Shah	Avg Liq. Value
1	Land and Building	Liq.Value	80,000,000	80,720,000			80,360,000
2	Plant and Machinery	Liq.Value		27,435,000	109,850,000 (Not considered)	27,000,000	27,217,500
			80,000,000	108,155,000	109,850,000		107,577,500

8. I say that the valuation with regard to the plant and machinery given by Mr. Girish Pawar & Mr. Vishwajeet Singh Jadon were substantially different. Therefore, I appointed another independent valuer being Mr. Devang Shah for conducting valuation for the plant and machinery. Hereto annexed and Marked as Exhibit D are the copies of the valuation reports.

9. I say that as per the valuation reports the average liquidation value of the land and building and plant and machinery is of Rs. 107,577,500/- (Rupees Ten Crores Seventy Five Lakhs Seventy Seven Thousand and Five Hundred Only)."

39. The liquidator has further deposed in the affidavit that he furnished the valuation reports to the Stakeholders Consultation Committee (SCC) and issued a public announcement for e-auction for liquidation of the estate at reserve price of Rs.10,75,77,500/- in two leading newspaper i.e. Financial Express and Loksatta Marathi (Pune Edition). Pursuant to this, 16 bidders expressed their interest and the auction was conducted on 20/4/2021 and Bhadrashree Steel and Power Limited, was declared as highest bidder, who bid for a consideration of Rs.13,00,78,000/- (Rupees Thirteen Crores Seventy eight thousand only).

The affidavit also state that the petitioner paid an amount of Rs.14,11,71,923/- (Rupees Fourteen Crores Eleven lakhs Seventy One thousand Nine hundred and twenty three only), including the GST and the interest of delayed payment which

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was followed by issuance of a sale certificate in its favour and handing over of the physical possession.

40. We have also perused the affidavit filed by the State Government which has raised a serious objection about the valuation report and a stand adopted by the State Government is, in fiscal/tax statutes, the provisions must be interpreted by applying the rule of literal interpretation and therefore, the proviso to Rule 4 (6) of the Rules of 1995 shall be applied in its true sense. A specific stand is adopted in the affidavit which is also emphasized by the learned Advocate General, that the proviso to Rule 4(6) stipulate that it is applicable to the sale of property by the Civil or Revenue Court, by obtaining pre-valuation and the same shall be read strictly as it do not even remotely suggest that it shall be applicable to the sale of property by the Court on the basis of pre-determined value.

It is a strong contention raised by the State Government that until both the conditions of proviso to Rule 4(6) i.e. (a) the property must be of government instrumentality and (b) the property sold/purchased by obtaining pre-determinative value, are satisfied, the benefit of the proviso cannot be availed.

It is also asserted that neither the NCLT nor a Liquidator appointed by the NCLT is a Civil Court or a Revenue Court.

41. Dealing with the opposition of the State, we must note that when the NCLT directed liquidation of Harneshwar Agro Products Power and Yeast (I) Limited, it passed an order admitting the application filed by the PNB, the creditor.

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Thereafter, the Interim Resolution Professional (IP) came to be appointed to manage the affairs of the Corporate debtor which was followed by appointment of Committee of Creditors (COC) on collection of all claims received against the corporate debtor, so as to determine its financial position, including the claim of financial creditors of the corporate debtor. In the meetings of COC, efforts were made to draw a Resolution Plan but since the RP did not receive any Resolution Plan, a request was made to appoint a Liquidator to liquidate the assets of corporate debtor.

A public announcement was made of appointment of the Interim Resolution Professional, who was then appointed as the Resolution Professional (RP).

42. Pursuant to the advertisement inviting expression of interest, it was decided to appoint a valuer and RP appointed two registered valuers and the information memorandum was prepared in terms of Regulation 36(1) of the Regulations of 2016. However, when a resolution was passed for liquidating the Company, an application was moved before the NCLT , Mumbai bench, by the RP which was allowed, permitting the Liquidator to conduct the liquidation proceedings as envisaged under Chapter III of the IBC, in terms of the process set out in the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. It is worth to note that the valuation reports were also placed before the NCLT, reflecting that, the NCLT was in control of the proceedings, being carried

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out by the Liquidator, as they were liquidation proceedings contemplated under Chapter III of the IBC 2016.

It is also worth to note that the NCLT was updated about the liquidation proceedings and was also appraised that the e-auction was completed, and the successive bidder had paid the amount, but in the wake of the issue pending with the Stamp and Registration Department, the conveyance could not be registered, and the NCLT expressed its displeasure over the conduct of the liquidator.

43. Though the State Government has raised a doubt about the three valuation reports by filing an additional affidavit, we must note that the Liquidator followed the procedure prescribed by Regulation 35 of IBBI Regulations 2016, which contemplate the following procedure.

“35(1) Valuation of assets intended to be sold. Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.

(2) In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor: Provided that the following persons shall not be appointed as registered valuers, namely: (a) a relative of the liquidator; (b) a related party of the corporate debtor; (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or (d) a partner or director of the insolvency professional entity of which the liquidator is a partner or a director.

(3) The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of

realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.

(4) The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.]

44. The Liquidator, therefore, called for the valuation initially from three valuers, in respect of the two class of assets, i.e. Land and Building and Plant and Machinery, and received four valuations in all. Noting that the valuation report of plant and machinery submitted by Mr. V. S. Jadon, and Mr. Girish Pawar had substantial difference, he followed the procedure contemplated under Regulation 35(1)(b), providing thus:-

“if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner prescribed in clause (a)”

He therefore appointed the third valuer, Mr. Devang Shah, for plant and machinery, and placed the report and the appointment of the third valuer was discussed in the meeting of Stakeholders' Consultation Committee, and only after the committee ratified the appointment, the valuation report from him was called for.

45. The procedure that is followed by the Liquidator is set out in the following words in his affidavit :-

“6 I say that the third valuer so appointed i.e. Mr. Devang Shah provided the valuation of Rs.2,70,00,000/- for plant and machinery. I say that as per Regulation 35(2) of IBBI Regulations, 2016. I am required to consider the averages of the two closest estimates of reserve price of the auction. I say that based on average of the two closest estimates given by the independent valuers the reserve price for the auction was fixed.”

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46. It is also worth to note that the Regulations of 2016 prescribe the procedure to be followed for conduct of the auction and is thus prescribed :-

“(1)The Liquidator shall accordingly sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

(2) The Liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when- (a) the asset is perishable; (b) the asset is likely to deteriorate in value significantly if not sold immediately; (c) the asset is sold at a price higher than the reserve price of a failed auction; or (d) the prior permission of the Adjudicating Authority has been obtained for such sale: Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to- (a) a related party of the corporate debtor; (b) his related party; or (c) any professional appointed by him. (3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.”

It is also open for the Liquidator, as per the said Regulation to sell the assets through electronic auction on an online portal but if the Liquidator is of the opinion that the physical auction is likely to maximize the realization from the sale of assets, he may sell the assets through physical auction after obtaining permission of adjudicating authority.

In consonance with the said Regulation, the liquidator, in this case, has carried out e-auction as per IBC 2016. It is worth to note that the auction was conducted with an intention of receiving maximum response, and in fact, from the affidavit it is evidently clear that the assets of the corporate debtor were to

be auctioned under three categories of the blocks, namely Block A, where only Land and Building is sold; Block B where only plant and machinery is to be sold; Block C where both land and building and plant and machinery are to be sold.

In this regard, the Liquidator has stated thus :-

“The participation of the bidders under each block was as under:-

BLOCK A	BLOCK B	BLOCK C
No participation	14 bidders	2 Bidders

I say that the final reserve price for each Block was as under:-

Particulars	Reserve Price (Rs)	Final Bid (Rs)
BLOCK A	8,03,60,000	NA
BLOCK B	2,72,18,000	5,75,18,000
BLOCK C	10,75,78,000	13,00,78,000

I say that since the auction of Block A failed, as per Regulation 4(A) where an auction failed at the reserve price, the liquidator may reduce the reserve price by upto twenty-five percent of such value to conduct subsequent auction. Since there was no bidder for Land and Building, I have distributed combined value of Rs.13,00,78,000/- between Land & Building and Plant and Machinery where Reserve Price of Land and Building is taken as same, and all excess value has been considered in Plant and Machinery category of assets.”

47. We find that the Liquidator has also deposed in his affidavit filed in March 2023 that nine progress reports were filed before the NCLT during the conduct of the liquidation proceedings and at various stages informing about the step taken by the Liquidator. Thus, it is worth to note that the NCLT was kept in loop when the assets of the corporate debtor were liquidated. In fact, on successful completion of e-auction, one entity, Nagaragro Farmer Producer Company Ltd filed an IA

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before the NCLT, seeking their participation in the auction and therefore, and during the course of hearing of this IA (No.1129 of 2021), the sale value was discussed before NCLT. On the NCLT rejecting the IA, Appeal was filed before NCLAT, where once again, the sale value and auction process received consideration and even the NCLAT, finding no merit, rejected the application, thereby upholding the finding of NCLT.

The NCLAT also noted that the Liquidator followed the procedure diligently and no flaw was found in the process. It noted that 16 bidders participated in the process, and the auction was complete on the fixed date, and the price received was higher by 2.5 crores as compared to the reserved price, and this resulted into a letter of intent being issued to the successful bidder, and the unsuccessful bidders were refunded their EMD.

It is worth to note that the amount which the property fetched was 2.5 crore more higher than the reserved price, and that satisfied the conscience of the NCLAT, and which was considered as one indicator of the assets receiving a higher price, and therefore, any interference in the process carried out by the Liquidator was found to be unwarranted, and the interim application was dismissed.

48. The progress reports filed before the NCLT from time to time are also placed on record, along with the affidavit filed by respondent no.4.

In light of the systematic procedure adopted by the Liquidator in conducting the Liquidation Process of the

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corporate debtor, and as projected before us, in accordance with the procedure prescribed, we find no reason to doubt the conduct of the Liquidator, who could fetch a price more higher than the reserved price. While appointing the valuers, we find that the Liquidator has followed the Companies (Registered Valuers and Valuation) Rules, 2017, which has set out the eligibility for registered valuers, and the process of conduct of valuation, and in no case has the State or its Authority expressed any doubt about the process of selection of valuers.

49. It is in the aforesaid circumstances, though it is vehemently urged before us that NCLT is not a Court within the meaning of 'Civil or Revenue court', empowered by law to sell the property by public auction, as contemplated under Article 16 of Schedule I of the Maharashtra Stamp Act, 1958, we must outrightly reject the said argument.

The National Company Law Tribunal, though constituted under section 408 of the Companies Act, 2013 is empowered to function as "Adjudicating Authority" for the purpose of IBC.

IBC is enacted for dealing with Insolvency of Corporate persons, partnership firms, and individuals in a time-bound manner and for maximization of value of their assets, and for balancing the interest of all stakeholders.

IBC under Chapter II has set out the Insolvency Resolution Process and in Chapter III, it provide for initiation of Liquidation Process in two contingencies; namely: (a) Before expiry of Insolvency Resolution Process period, or the

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maximum period permitted for completion of Corporate Insolvency Resolution Process. (b) If no Resolution Plan under sub-section (6) of Section 30 is received, or the Adjudicating Authority reject the Resolution Plan under Section 31 for non-compliance of requirements specified therein.

In both these contingencies, the Adjudicating Authority shall pass an order directing the corporate debtor to be liquidated in the manner laid down in the said Chapter, by issuing a public announcement stating that the corporate debtor is in liquidation.

The Liquidation proceeding is therefore ordered by the NCLT, and our attention was invited to the order passed by the NCLT, allowing the application filed by RP, as no resolution plan was received by him, and the application being filed under Section 33(1). The NCLT allowed the application on 03/12/2020, thereby appointing the Liquidator as provided under Section 34(1) of the Code, and directing him to initiate liquidation process as envisaged under Chapter III of the Code, by following the process given in the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

The Liquidator was conferred with the powers of the Board of Directors, key managerial personnel and partners of the corporate debtor by the NCLT, and was directed to carry out the process by issuing public notices declaring that the corporate debtor is in liquidation, and the personnel of

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corporate debtor, as per the order of the NCLT, were under obligation to extend their cooperation to the Liquidator for managing the liquidation process of the corporate debtor.

50. The scheme of the Companies Act, 2013 read with the IBC, would reveal that the NCLT act as an Adjudicating Authority under IBC, and though NCLT while deciding the proceeding before it, is not bound by the procedure laid down in the Code of Civil Procedure, but it is guided by the principles of natural justice and for discharging the functions, is vested with certain powers of a Civil Court under the Code of Civil Procedure 1908, restricting to the specific powers as set out in sub-section (2) of Section 424 of the Companies Act 2013. Any order made by the Tribunal or Appellate Tribunal is to be enforced in the same manner as if it was a decree made by the Court in a Suit, and the Tribunal is empowered to send for execution its orders to the Court within local limits of whose jurisdiction the Registrar's office of the company is situated.

By virtue of sub-section (4) of Section 424, all proceedings before the NCLT are deemed to be Judicial proceedings, and the Tribunal is deemed to be a Civil Court for the purposes of Section 159 and Chapter XXVII of the Code of Criminal Procedure.

51. It is worth to note that by virtue of Section 430 of the Companies Act, 2013, enforced from 1/6/2016, the Civil Court shall not exercise jurisdiction to entertain any suit or proceedings in respect of any matter which the Tribunal or the

Appellate Tribunal is empowered to determine by or under this Act, or any other law for the time being in force. Thus, the jurisdiction of Civil Court under Section 9 is barred in the wake of Section 430 of the Companies Act 2013.

Since the NCLT act as an Adjudicating Authority, in relation to the implementation of the provisions of the IBC, and for the liquidation proceedings under Chapter III of the IBC 2016, the Adjudicating Authority is the NCLT constituted under Section 408 of the Companies Act, with the detailed procedure being set out for initiation of liquidation and conduct of the proceedings by the Liquidator, we must note that when the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, it make a recommendation for appointment of the Resolution Professional as the Liquidator, and he shall then be so appointed. On his appointment, it is the Tribunal which vests him with the power of the Board of Directors, key managerial personnel, and partners of the Corporate debtor, and they shall cease to exercise the power from that date, all such powers are vested in the Liquidator.

The Liquidator conduct the liquidation process for which he is entitled for a fee, and IBC has also set out the powers and duties of the liquidator in Section 35. All his actions/discharge of functions are subject to the directions of Adjudicating authority. The Receiver shall exercise the following powers:-

“(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

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- (c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;
- (d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;
- (e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;
- (f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;
- (j) to settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
- (k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;”

It is the Liquidator so appointed, entitled to apply to the Adjudicating authority for such orders or directions, as may be necessary for completing the process of liquidation, and he is duty-bound to report the progress of the process in a manner, as may be specified by the Board. The said Chapter also contains specific provisions for allowing the Liquidator to access certain information, and he is also conferred with the power of preferential transactions, by seeking appropriate directions from the Adjudicating Authority, and even for avoidance of preferential transactions, and this is so contemplated in Section 43 and 44 of the IBC.

The manner in which the interest of the creditor shall be served in the liquidation proceedings is also set out along with the distribution of assets in the order of priority, as set out in Section 53.

Upon completion of the process of liquidation of the assets of the corporate debtor, the liquidator, under Section 54,

shall make an application for its dissolution to the Adjudicating Authority within 180 days from the liquidation commencement date, although he may also seek extension of the time, which shall not exceed a period of 90 days.

52. From reading of Chapter III of IBC, it is evident that the process carried out by the Liquidator, including sale of the assets of the corporate debtor for realization of its value, so as to distribute the same amongst the secured creditors and others, he is duty-bound to act under the guidance of the NCLT.

In the present case before us, we have seen that the Liquidator was appointed under the orders of the NCLT, and from time to time, the progress report of the liquidation proceedings was presented before the Tribunal. Since the liquidator is empowered to liquidate the estate/assets of the corporate debtor by taking into custody or control of its assets, property, actionable claims, etc., and evaluate the assets and property in the manner that is specified by the Board, and sell the immovable and movable property by public auction or private contract, coupled with the power to transfer such property to any person or body corporate, in our view, the process adopted by the Liquidator of e-auction in which 16 bids were received. The petitioner being found to be highest bidder, for the Land and Building and the plant and machinery put up for auction and the Process secured a price higher than the average liquidation value arrived at by the liquidator. Hence in our view, it is entitled to be accepted as the 'true value of the

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assets’.

We do not intend to read the term ‘civil court’ under Article 16 to be restricted to a civil court, but a tribunal like the National Company Law Tribunal, constituted under Section 408 of the Companies Act, vested with certain powers of the civil court, and when it acts as an ‘Adjudicating authority’, under the IBC with the power being conferred to appoint a Liquidator to liquidate the properties/assets of the corporate debtor who has followed the procedure prescribed, in our view, we find no justification in the submission of the Learned Advocate General that the value mentioned in the sale certificate shall not be considered as the true market value.

53. At this stage, we are guided by the observations of the Hon’ble Apex Court in **ASL Vyapar** (supra) which involved implementation of an order passed by a Single Judge of the Court in a partition suit. The Joint Receiver appointed by the Court issued an advertisement in a leading daily newspaper for sale of land, and several parties participated.

The bid amount offered by one entity was accepted by the Single Judge, and sale was confirmed in its favor, and it was directed that the aforesaid consideration, being the actual consideration, would be treated as value of the property for purpose of registration of standard deed. A conveyance was executed and presented for registration, and based on the sale consideration, the stamp duty penalty was paid. However, upon receipt of a notice from Registrar of Assurances under the

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Indian Stamps Act, stating that the fee paid was deficit, contempt proceedings were initiated against the Registrar for committing breach. He filed an application for seeking recall of the order, but it was rejected, and being aggrieved, the Registrar filed an appeal before the Division Bench and the question was referred for decision by a larger bench which was answered by the Calcutta High Court.

With reference to the provisions of Section 47A of the Indian Stamp Act, which cover the instruments of conveyance and provide that when there was reason to believe that the market value of the property was not truly set forth in instrument, the Registering Officer is entitled to ascertain its market value and compute the proper stamp duty chargeable on the market value so ascertained.

It is in this background the Hon'ble Apex Court clearly expressed that the provision of Section 47A of the Act cannot be said to have any application to a public auction carried out through Court process/Receiver, as that is the most transparent manner of obtaining the correct market value of the property. What is important to note is the specific observation to the effect that in such auction, the price obtainable may be slightly less, as any bidder is required to take care of the scenario where the auction may be challenged and there is always an apprehension of it being overturned.

54. Applying the ratio flowing from the said decision to the present case, it would immediately strike to us that conduct of

the auction by the Liquidator for liquidating the assets of the corporate debtor under the aegis of the NCLT, the 'Adjudicating Authority' was also an open and transparent process, and in fact, the necessary valuation was also called for in accordance with the Regulations of 2016, and no doubt can be expressed about the said valuation. More particularly, whatever was the amount that was fixed as reserved price and the offer received from the highest bidder was all within the knowledge of the NCLT as time-to-time progress reports were filed, as the process was conducted strictly in accordance with Chapter III of the IBC.

We therefore, have no reason to doubt the validity of the said auction.

55. Yet one another aspect we must take note of, being that whenever properties are sold in this manner, whether in SARFAESI proceedings before the DRT/DRAT, or the proceedings when the company is in liquidation under the Companies Act, or as in the present case, when the Corporate debtor is undergoing insolvency procedure through the liquidation process, in such a case, the property may not fetch the actual market value as it is a distress sale, and as expressed by the Hon'ble Apex Court in **ASL Vyapar** (supra), it may fetch a lesser price. Despite this, if the State claims that it must have its pound of flesh, irrespective of whether the property has fetched the market price as per the desire of the State and computed as per the ASR rates, in our view, the demand is completely

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unjustified.

In our view, it is a different aspect to say that the property must fetch a price depending upon its market value, but it may not always hold good.

If there is good reason for the Collector to form an opinion that the true market value of the property has been intentionally reduced or suppressed, so as to take benefit and avoid the payment of stamp duty, the Collector/Registrar in exceptional case, may step in and adjudicate the true market value.

However, in the case before us, we do not find that such a course is available to the Registering Authority/Collector of Stamps.

56. As a result of the above discussion, we direct that the petitioner shall pay the stamp duty on the basis of the auction value and sale certificate issued by the Liquidator i.e. on the amount of Rs. 8,03,60,000/- (Rupees Eight Crores Three Lakhs Sixty thousand) and the process of registration of deed of assignment and conveyance deed be completed, and the property shall stand transferred in favor of the petitioner.

In the wake of disposal of the Writ Petition, the pending Interim Applications stand disposed of.

Rule is made absolute in above terms. No order as to costs.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

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